IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10571 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K. RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 3 : YES // 3 to 5 : NO

EXECUTIVE ENGINEER

Versus

BHIMA RAMAJI PUROHIT

Appearance:

MS SEJAL K MANDAVIA for Petitioners

MR NR SHAHANI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/04/2000

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. In the present petition, the Order passed by the Labour Court, Bharuch in Recovery Application No. 53 of

1997 dated 28th October, 1999 is under challenge.

3. In this matter, notice was issued on 30th December, 1999 making it returnable on 31st March, 2000. In the meantime, ad-interim stay of the impugned order was also granted by this Court [Coram : M.C Patel, J.].

4. The brief facts of the present writ petition are that the respondent workman was working as Oilman Mechanical with effect from 1978 and his service was terminated in the year 1986-87 by the petitioner. The said order of termination was challenged by the respondent workman before the Labour Court, Bharuch in Reference (LCB) No. 597 of 1990. After considering the facts and circumstances of the case, the Labour Court on merits had set-aside the said termination order and thereby granted reinstatement with continuity of service with full backwages for the interim period. The said Award passed by the Labour Court, Bharuch was challenged by the petitioner by filing Special Civil Application No. 8377 of 1994 and the said petition was dismissed by this Court thereby confirming the award passed by the Labour Court, Bharuch.

5. The respondent workman thereafter filed a Recovery Application No. 53 of 1997 before the Labour Court, Bharuch and claimed the benefit of pay scale on the basis of continuity of service which has been granted by the Labour Court, Bharuch. According to the respondent workman, he had completed more than 20 years' service with the petitioner, and therefore, he is entitled to fixation of pay as per the rules and circulars of the Government and also he is entitled to draw increments during the interim period. Before the Labour Court, it was the grievance of the respondent that he was not paid regular salary on the basis of continuity in service and also not paid dearness allowances, house rent allowance, medical allowance, etc., and therefore, he claimed difference of salary which was not paid to the respondent workman on the ground of his having pre-existing right to receive the same. Before the Labour Court, the petitioners have raised a contention in the written statement vide Exh. 9 that the respondent workman is not entitled to any benefits of pay scale and whatever benefits have been paid to the respondent workman are legal and valid and respondent workman is not entitled to any other benefits which have been claimed by him. Before the Labour Court, the respondent workman was examined vide Exh. 12 and thereafter his evidence was closed. The petitioner has examined the witness vide Ex.17-one Sub-Divisional Officer. Thereafter, the Labour

Court has examined the merits of the matter and also examined whether the respondent workman is having pre existing right to receive the same which was demanded by him on the basis of Government Resolutions. The contention of the petitioner was that respondent workman was not entitled to revised scale of pay as per the Government Resolutions and considering the Government Resolution dated 18th August, 1999, the respondent is not entitled to new/revised Vth Pay Commission and the respondent was only entitled to benefit of 18th August, 1999 resolution and not entitled to the benefit of Government Resolution dated 7th January, 1998. Thereafter, the Labour Court has examined the evidence on record and came to the conclusion that the petitioner has admitted before the Labour Court that according to the G.R., the respondent is entitled to the salary of Rs. 5,000/= p.m. instead of that petitioner has paid the salary to the respondent workman after reinstatement only in the pay scale of Rs. 1300-1500 and thereafter in the scale of Rs. 1500-2000. The Labour Court has also considered that respondent workman has completed 20 years service and junior to the respondent is receiving higher salary, and therefore, according to the Labour Court the respondent-workman is having a pre-existing right and he is entitled to receive salary as per the Government Resolution with all consequential benefits as the concerned workman has completed more than 20 years' service.

Ms. Sejal Mandavia, learned advocate appearing for the petitioner submitted that in the evidence of the witness of the petitioner, there was no admission in respect to the fact that a similarly situated employee receives more than Rs. 5,000/= p.m and this fact has been denied in terms by the witness of the petitioner. However, she fairly submitted that witness has in terms stated that according to the Government Resolution, no fixation has been carried out in favour of the respondent workman and further, considering the Government Resolution, the respondent workman is entitled to draw monthly salary of Rs. 5000/- from 1994. The Labour Court has considered Government Resolutions dated 18th August, 1999 and 7th January, 1998. In Government Resolution dated 18th August, 1999, the revised scale has been established by the Government for daily wagers working in the various departments of the State Government. Considering the reasoning given by the Labour Court that when the termination has been set-aside and respondent is granted reinstatement with continuity of service for interim period and in pursuance to the award, the respondent workman was reinstated in service,

therefore, the respondent workman was entitled to receive regular salary on the principle of equal pay for equal work as the similarly situated junior employees working on the same post are receiving higher salary. It also appears from the reasoning given by the Labour Court that the juniors working in the same post and in the same capacity are receiving higher salary on the basis of Government Resolution dated 7th January, 1998, and therefore, this aspect and evidence of the witness of the petitioner wherein an admission has been made at page 21 [internal page 6 of the order] that if the Government Resolution is considered then the respondent workman is entitled to atleast monthly salary of Rs. 5000/= with effect from 1994. Considering all these reasoning given by the Labour Court and the respondent workman having pre existing right to receive regular salary after completion of 20 years' service on the basis of Government Resolution, the Labour Court has rightly exercised powers under Sec. 33 C (2) of the Industrial Disputes Act, 1947 which gives power to the Labour Court to decide the question whether according to the Government Resolution, the respondent workman is entitled to the benefit or not and after considering the oral and documentary evidence, the Labour Court has rightly come to the conclusion that the respondent workman is having pre-existing right and is entitled to receive monthly salary on the basis of Government Resolution as his junior is receiving higher salary, and therefore, the Labour Court has passed order dated 20th October, 1999 granting the benefit of Rs. 92,000/= with 6% interest w.e.f 1994 and the said order is legal and valid.

The Industrial Disputes Act, 1947 as originally enacted does not provide any speedy remedy to the individual workmen enabling them to enforce their existing rights. This provision, to certain extent, fill up the lacuna which was discovered. It purported to supply a speedy remedy to an individual workman after an award was made to implement or execute the relief given to him under the Award. Sub-sec. (1) of the Section provided that if money was due to an employee from his employer under an award or decision of the Industrial Tribunal, it may be recovered as an arrears of land revenue. Sub-sec. (2) of Section 33-C deals with the cases where any workman was entitled to receive from the employer any benefit under an Award or decision of an Industrial Tribunal which was capable of being computed in terms of money and it provided that the amount of which the said benefit could be computed may be determined subject to the Rules and the amount to determine could be recovered as provided. Sec. 33-C

provides both a forum and procedure for computing both monetary as well as non-monetary benefits in terms of money and further provides machinery for recovery of such claims. I have considered three decisions of the Apex Court in cases of Punjab National Bank v. Kharbanda (KL) [1962] 1 LLJ 234 SC; in case of Central Bank of India v. P.S Rajagopalan [1963] II LLJ 89 SC; and in case of Bombay Gas Company Limited v. Gopal Bhiva [1963] I LLJ 608 SC.

The legislative history indicates that the legislature, after providing broadly for the investigation and settlement of disputes on the basis of collective bargaining, recognised the need of individual workmen of a speedy remedy to enforce their existing individual rights, and therefore, inserted Sec 33 A in 1950 and Sec. 33 C in the year 1956. These two Sections illustrate cases in which individual workmen can enforce their rights without having to take recourse to Sec. 10 (1) and without having to depend on their Union to espouse their cause.

In view of the history two considerations are relevant while construing the scope of Sec. 33-C where industrial dispoutes arise between workmen acting collectively and their employees, such disputes must be adjudciated upon in the manner prescribed by the Act, as for instance, under Sec. 19 (1). But, having regard to the legislative policy to provide a speedy remedy to individual workmen for enforcing their existing rights, it would not be reasonable to exclude their existing rights sought to be implemented by individual workmen. Therefore, though in determining the scope of Sec. 33-C care should be taken not to exclude cases which legitimately fall within its purview, cases which fall, for instance, under Sec. 10 (1) cannot be brought under Sec. 33-C. Further, Sec. 33C which is in terms similar to those in Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950, is a provision in the nature of an executing provision.

Section 33C (1) applies to cases where money is due to a workman under an Award or settlement or under Chapter V-A of the Act already calculated and ascertained and, therefore, there is no dispute about its computation. But sub-Sec. (2) applies both to non-monetary as well as monetary benefits. In the case of monetary benefits, it applies where such benefit though due is not calculated and there is a dispute about is calculation.

Section 33 C (2) takes within its purview cases of workmen who claim that the benefit to which they are the right to the benefit of which their claim is barred is disputed by their employees. It is open to the labour court to interprete the award or settlement on which the workmen's right rests.

In case of Rajendranagar Municipality v. B.,V Perruja, reported in (1995) Lab.IC 2102, it has been held by the High Court of Andhra Pradesh as under:-

`(a) To understand, the term `right' like duty, can be used in a wider sense. To say that a man has a right to something is roughtly to say that it is a right for him to obtain it. This may entail that others ought to provide him with it or that they ought not to prevent him from getting it [page 217 of Salmond on Jurisprudence, 12th Edition by P.J Fitzgerald].

(b)Rights like wrongs and duties, are either moral or legal. A moralor natural right is an interest recognised and protected by a rule of morality - an interest the violation of which would be a moral wrong, and respect for which is amoral duty. A legal right, on the other hand, is an interest recognised and protected by a rule of law - an interest the violation of which would be a legal wrong done to him whose interest it is and respect for which is a legal duty. [page 218 of Salmond on Jurisprudence (supra)].

(c) In the generic sense, a legal right may be defined as any advantage or benefit conferred upon a person by a rule of law [page 224 of Salmond on Jurisprudence (supra)].

Now with these concepts, if the expression `entitled' in Sec 33 (C)(2) is understood, can there be even a spec of doubt that such being a vested right, could it not be an existing right or the right provided for which is a right for the workman to obtain it, which may entail others including the employer to provide it or that they ought not to prevent the workman from getting it or that it would not be a wrong for the workman to get it ? Read in that context, will it not be a legal right and an interest recognized and protected by a rule of law or an advantage conferred upon the workman by a rule of law and that any such right or

entitlement in the provision have the characteristics of a legal right detailed supra ? Can it not include a right of entitlement created by law or any law to call it a statutory right? A simple answer for these questions ought to be in the affirmative. Therefore, a statutory right which should be a legal right as an entitlement should be clearly brought into the expression `existing right' or the `right provided for' which requires no proof. Here only we should press right into wages for overtime under sec. 59 of the Factories Act, 1948 read with Sec. 2 (h) of the Minimum Wages Act, 1948 (regarding wages) as the existing right or the right provided for, for the purpose of entitlement under Sec. 33 (C) (2) of the Industrial Disputes Act regarding which no proof is warranted..... It may be mentioned that even borrowing the expression of the Supreme Court in Municipal Corporation of Delihi's case (1994) AIR SCW 5000 (Supra) in para 12, when overtime is the very basis of the claim viz., statutory right is not disputed much less can be disputed, the jurisdiction of the Labour Court under Sec. 33 (C)(2) of the I.D Act cannot be taken to be ousted."

In case of Bharat Krishak Samaj and M.L Kakkar and Others, reported in (1984) I LLJ FW 251, it has been held by the High Court of Delhi as under :-

`13. Sec. 33 C (2) sets up a little piece of machinery for working out the amount where there is no industrial dispute and where the right is based either on a contract or on a statute. It will be anomalous to hold that the workman for the purpose of mere computation of the amount must go to the appropriate Government every time and raise an industrial dispute for that purpose under Sec. 10 of the Act. The claim for overtime wages, in my opinion, made by the workman was a matter for the Labour Court to compute under Sec. 33 C (2). This Court did and arrived at the conclusion that a sum of Rs. 9600/- was due from the Samaj to the workman.'

In case of V.M Vankar versus Indian Farmers Fertilizers, reported in (1984) Lab. IC 1342, it has

been held by this Court as under :-

`Held that the Labour Court committed an error apparently on the face of the record in holding that it had no jurisdiction to entertain the application under Sec. 33 (C)(2). The petitioner employee did not seek to establish a new right. The pay scale attached to the workman discharging the functions as bag stickers, bag fillers, etc., had already been determined by the agreement arrived at by consent. The petitioner merely sought enforcement of this right which was denied to him on the basis that he was not discharging duties in such a capacity. The dispute was limited to controvery ranging around the factual issue as to whether or not the petitioner was discharging duties in such capacity. It could nmot be said that the petitioner was inviting the labour court to create a new right in his favour for the first time. Nor could it be said that the labour court was invited to categorise or classify the workman who were entitled to the higher pay scale applicable to bag stitchers, bag fillers, pointsmen, etc. The task of classification had already been completed by the parties by virtue of the sttlement arrived at in the course of conciliation proceedings. The only task which required to be performed was to decide the question as to whether the assertion made by the employee that he was actually discharging the functions as bag stitchers, bag filler, etc was made good on the basis of the evidence and the material produced before the albour court surely there could not be a reference under Sec. 10 (1) simply in order to determine this issue. It was in fact not an industrial dispute in the strict sense. The question was one of the ascertaining on the basis of the evidence and material as to what exact work the workman was doing simply in order to work out the existing rights as per the binding agreement. IT was only for the incidental and ancillary purpose of dtermining the salary payable to the workman on the basis of the existing binding agreement that the inquiry was required to be undertaken. It could hardly be said that it was an industrial dispute in the larger sense which was required to be resolved on policy or principle., No question of principle or policy or conferment of new rights arose at all.

It was merely `working out' of existing rights depending on the finding recorded in the context of the factual controversy as to whether or not the petitioner was doing this work. Thus, it was merely an incidental or ancillary question which required to be resolved by the Labour Court in exercise of powers under Sec. 33 C (2) in discharging functions analogus to the functions discharged by the executing Court.'

Now, considering the above proposition of law laid down by the Apex Court and various High Courts, I had perused the entire order passed by the Labour Court and also considered the reasonings right given by it in light of the admission of service of the petitioner and also considering the principle of equal pay for equal work, recently, the Apex Court has considered the very idential situation in the matter of Director General (Works), CPWD v. Ashok Kumar & Ors., reported in (2000) LLR 67 wherein the Apex Court has observed that, `application under Sec. 33-C (2) filed by the workman to recover the money due from the employer - Condition precedent to entertain - Employees of work charged establishment - Employer paying regular pay scale pursuant to decision of Supreme Court in Surinder Singh v. Engineer-in-Chief, (1986), 1 SCC 639 - Employee's application u/s. 33-C (2) for recovery of pay for period prior to Judgment in Surinder Singh's case - Application opposed as not maintainable unless employee's right for regular pay scale adjudicated first - Not tenable Employer himself implemented decision in Surinder Singh's case - No question of adjudication of right to regular pay scale - Application rightly entertained by Labour Court.' The Apex Court in the said decision has considered the verdict rendered by it in the matter of Municipal Corporation of Delhi v. Ganesh Razak (1995) 1 SCC 235. In the present case, the respondent workman has claimed the benefit of pay scale on the basis of continuity of service which has been granted by the Labour Court, after completion of more than 20 year's service, relying upon the Government Resolution dated 18th August, 1999. The Labour Court has also considered the important fact that one junior to the respondent was getting regular salary on the basis of said Resolution, and therefore, the respondent is entitled to regular salary on the principle of equal pay for equal work. The Apex Court has considered the doctrine of `Equal work Equal pay' in the matter of Jaipal & Ors. v. State of Haryana & Ors., reported in AIR 1988 SC 1504. The Apex Court has observed that, `Art. 39 (d) contained in Part

IV of the Constitution ordains the State to direct its policy towards securing equal pay for equal work for both men and women. Though Art. 39 is included in the Chapter of Directive Principle of State Policy, but it is fundamental in nature. The purpose of the Article is to fix certain social and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay. The doctrine of equal work equal pay would apply on the premises of similar work, but it does not mean that there should be complete identity in all respects. If the two classes of persons do same work under the same employer, with similar responsibility, under similar working conditions, the doctrine of `equal work equal pay' would apply and it would not be open to the State to discriminate one class with the other in paying salary. The State is under a Constitutional obligation to ensure that equal pay is paid for equal work. Also, it is too late in the day to disregard the doctrine of equal pay for equal work on the ground of one employment being temporary and the other being permanent in nature. A temporary or casual employee performing the same duties and funtions is entitled to the same pay as paid to a permanent employee. So also, the difference in mode of of selection will not affect the application of the doctrine of `equal pay for equal work' if both the classes of persons peform similar functions and duties under the same employer.'

In view of the above observations made by the Apex Court, according to my opinion, the Labour Court has not committed any error while exercising its jurisdiction under Sec. 33 C(2) of the Industrial Disputes Act, 1947. Ms. Mandavia is not able to point out any infirmity in the order and is also not able to point out any jurisdictional error committed by the Labour Court while exercising the powers under Sec. 33 C (2) of the Act. According to my opinion, the Labour Court has sufficient powers to grant interest while exercising jurisdiction under Sec. 33 C (2) of the Act; as per the decisions rendered in the matter of Saijpur Bogha Nagar Palika Octroi Karmachari Mandal v. Ahmedabad Municipal Corporation [1991 (2) GLR 956] and of Management of Tabesh Process, Shivakasi v. Presiding Officer, Labour Court & Ors. [1990 (1) LLJ 143]. Therefore, considering the overall facts and circumstances of the case, according to my opinion, the Labour Court has not committed any error either on law or on facts and there is no infirmity which requires interference from this Court in exercise of the powers vested under Art. 226 & 227 of the Constitution of India. Further, in view of two decisions of the Apex Court in the matters of

Ahmedabad Municipal Corporation v. Virendra Kumar Jayantibhai Patel, [1998 (1) GLR 17] and of Chhagan Ranchod Kukvava v. General Manager, Western Railways, Bombay & Anr., [1998 (1) GLH 461], this Court cannot act as an appellate authority and also cannot reappreciate the evidence which was led before the Labour Court. Therefore, according to my opinion, there is no substance in this petition. The same stands dismissed. Notice is discharged. Ad-interim relief granted earlier is vacated. There shall be no order as to costs.

[H.K Rathod, J.]

Prakash*